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There are many other points raised by Dr. Mülberger which would merit discussion, if space permitted. While certain lines of policy are advocated, upon the advisability of which we must differ with the author, the book as a whole is a valuable contribution to the study of railway policy, and may be heartily recommended not only to those interested in German railroads, but to all students of transportation.

WALTER E. WEYL.

Philadelphia.

State Control of Trade and Commerce by National or State Authority.

By ALBERT STICKNEY. Pp. xiv, 202. New York: Baker, Voorhis & Co., 1897.

It is not often that a strictly legal work calls for notice in the ANNALS, but Mr. Stickney's subject lies as much in the fields of economics and political science as it does in the domain of law. The corporate organization of industry has necessitated such a degree of state interference in industrial matters that the student of economic phenomena is perforce obliged to become a student of a large body of law. The problems of state regulation and state control of industry have become more instead of less complicated and fundamental with the evolution of the corporation. Indeed, the corporate organization of industry is compelling economists to recast their theories of production and distribution and requiring political scientists to revise their notions of the functions of the state. This being the case, it becomes extremely desirable that workers in the economic and political sciences should know clearly the spirit and scope of existing laws regarding the state control of trade and commerce.

Mr. Stickney has very successfully depicted the course of English and American law concerning the state control of private and public employments. The contrast between private and public employments is sharply drawn, and chapters are given to the control of each class of employments in England as well as in America. In each of these four chapters the leading statutes are quoted in full or in part, and the more important judicial decisions interpreting the statutes are critically considered. Chapter V discusses the "recent decisions as to contracts in restraint of trade or commerce," the two important decisions considered being that in the New York case, *People vs. Sheldon*, and that in the United States *vs. Trans-Missouri Freight Association*. In the closing chapter of the book the author endeavors to prove that "combinations formed to prevent

competition among the combining parties, or to raise prices [do not] work any substantial damage to the public."

The book was written to prove the thesis that the "recent decisions of our highest tribunals, especially the United States Supreme Court and the New York Court of Appeals, holding that a mere combination of carriers, or of, private property owners, providing for the fixing of rates and prices for their own property, by one common authority for all, constitutes a crime, are . . . at variance with the tendencies and growth of English and American law, and . . . in conflict with the fundamental principles of the law of property under a modern constitutional government." It seems to me that the author has proved a part of his thesis, but has failed to establish his thesis as a whole. In his admirable analysis of the course of English and American law as to the control of industry, Mr. Stickney proves conclusively that recent decisions have given a new meaning to the term "contracts in restraint of trade." There is no doubt that the New York Court of Appeals and the Supreme Court have regarded "contracts in restraint of trade" differently than they were treated in previous decisions, and that they have thereby made new law. The author has proved that much of his thesis.

Precedent, however, is not all decisive even in law. The courts may have taken the stand they did in *People vs. Sheldon* and *United States vs. Trans-Missouri Freight Association* because they erred in their interpretation of the legal principles involved, as Mr. Stickney maintains; or the decision may have been reached because economic and social conditions have so changed that legislation concerning the state regulation of industry in the present decade means something different from what it meant five hundred or even one hundred years ago. It is possible that a judicial interpretation of very recent laws that is consonant with existing economic and social conditions will not tally in form, at least, with previous decisions reached when those conditions were very different. Mr. Stickney's argument is based strictly on legal precedent, and he takes little or no account of the influences exerted by industrial and social changes. Indeed, he denies that those changes may properly modify in any way the attitude of the state toward the control of private employments.

Mr. Stickney is not an extreme individualist, for he justifies the recent extension of the state control to public employments. "Public control with these properties," he says, "has taken the form of control, both of the use of the properties, and of the prices of such use. Such control is a necessity. It is recognized as such

by all competent judges. It has its legitimate province and its legitimate limitations. It appears to be increasing rather than decreasing. The reason is that the public necessities demand such increase." The validity of these views will hardly be questioned. Furthermore, the author is to be commended for the accuracy with which he points out the fundamental differences between public and private employments, and he is correct when he asserts that a recognition of those differences "lies at the bottom of all sound legislation for the regulation of properties and employments of all kinds." Mr. Stickney errs in pushing a sound principle too far. Neither lawyers nor economists will accept the following views as accurate: "Experience shows that in its contest with capital, labor is well able to take care of itself. We need have no fears for its future. . . . Neither will it in the long run get more than its just dues. Each can well take care of itself. Each is fully protected by the industrial laws." I question whether "the 'genius of our institutions' is overwhelmingly in favor of emancipation from all restrictions on complete contractual freedom—in private employments."

EMORY R. JOHNSON.

System der nationalen Schutzpolitik nach Aussen. By Dr. JOHANNES WERNICKE. Pp. 340. Price, 6m. Jena: Gustav Fischer, 1896.

The term "national protection" has a much more extended meaning in Germany than in the United States, and it is protection in its widest sense that is treated in the work under review. The ten chapters into which the book is divided take up subjects as diverse as tariffs and immigration, railroad charges and the standard of value. The standpoint of the author is that of extreme protectionism which savors at times of old-time mercantilism. The ideal economic policy is described as one that encourages in every possible way the home production of all kinds of commodities. This ideal possesses a political as well as an economic side. The government should encourage exports rather than imports, and it is preferable that money should show a tendency toward in-flowing rather than out-flowing. Free trade is a thing of the past. As it exists in England it is a one-sided protection, favoring the industrial classes at the expense of agriculture. The foundations of a state rest upon a protection of the weaker against the stronger, and upon a policy which develops not only manufacturing but also agriculture.